

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

THE CITY OF HUNTINGTON,

Plaintiff,

vs.

CIVIL ACTION  
NO. 3:17-01362

AMERISOURCEBERGEN DRUG  
CORPORATION, et al.,  
Defendants.

## Defendants.

CABELL COUNTY COMMISSION.

Plaintiff,

vs.

CIVIL ACTION  
NO. 3:17-01665

AMERISOURCEBERGEN DRUG  
CORPORATION, et al.,

## Defendants.

Videotaped and Zoom video conference deposition of JAMES RAFALSKI taken by the Defendants under the Federal Rules of Civil Procedure in the above-entitled action, pursuant to notice, before Jennifer Vail-Kirkbride, a Registered Merit Reporter, on the 11th day of September, 2020.

Page 2

1 APPEARANCES:

2 APPEARING FOR THE PLAINTIFFS:

3 Michael J. Fuller, Esquire (via Zoom)

4 Kathleen Knight, Esquire (via Zoom)

5 A.J. Elkins, Esquire (via Zoom)

6 Amy Quezon, Esquire (via Zoom)

7 MCHUGH FULLER LAW GROUP

8 108 1/2 Capitol Street

9 Suite 300

10 Charleston, WV 25304

11 APPEARING FOR THE DEFENDANT McKESSON CORPORATION:

12 Paul Schmidt, Esquire (via Zoom)

13 Christopher Eppich, Esquire (via Zoom)

14 Megan E. Monaghan, Esquire (via Zoom)

15 COVINGTON & BURLING

16 One City Center

17 850 Tenth Street NW

18 Washington, DC 20001

19 APPEARING FOR THE DEFENDANT CARDINAL HEALTH:

20 Raymond S. Franks, II, Esquire (via Zoom)

21 CAREY DOUGLAS KESSLER & RUBY, PLLC

22 707 Virginia Street East

23 #901

24 Charleston, WV 25301

304.345.1234

Suzanne Salgado, Esquire (via Zoom)

Jennifer Wicht, Esquire (via Zoom)

WILLIAMS & CONNOLLY

725 Twelfth Street, N.W.

Washington, DC 20005

Page 3

1 APPEARING FOR THE DEFENDANT AMERISOURCEBERGEN:

2 Joseph J. Mahady, Esquire (via Zoom)

3 Abigail M. Pierce, Esquire (via Zoom)

4 REED SMITH LLP

5 Three Logan Square

6 1717 Arch Street, Suite 3100

7 Philadelphia, PA 19103

8

9 ALSO PRESENT:

10 Gregory Diefenbaugh, Legal Video Specialist

11 (via Zoom)

12 Renee Cook, Esquire (via Zoom)

13

14

15

16

17

18

19

20

21

22

23

24

## EXAMINATION INDEX

9 - 11 - 2020

Deponent :

James E. Rafalski

Page 5

1 EXHIBIT INDEX  
2

MAR

3	Rafalski ABDC Deposition Exhibit	
4	Exhibit 1 Settlement and Release	320
	Agreement between the DEA and	
	AmerisourceBergen	
5	Rafalski Deposition Exhibit	
6	Exhibit 1 James Rafalski Expert Report	9
7	Exhibit 2 Schedule I of James Rafalski	9
	Expert Report	
8	Exhibit 4 List of parties whom Dr.	62
9	Rafalski has given an opinion	
10	who helped cause the opioid	
	epidemic	
11	Exhibit 5 March 10, 2020 hearing	66
	transcript in New York case	
12	Exhibit 6 McCann deposition transcript	120
13	dated 9-1-2020	
14	Exhibit 7 February 7, 2020 Deposition	129
15	Testimony of Rafalski	
16	Exhibit 8 Dr. Craig McCann Expert	244
	Report in CT2	
17	Exhibit 12 Year 1 and Year 2 charts from	298
18	Dr. McCann's report	
19	Exhibit 13 Year 1 and Year 2 charts from	308
20	Dr. McCann's report, second	
	example	
21	Exhibit 17 Declaration of Michelle	169
22	Cooper	
23	Exhibit 20 Energy and House Committee	176
	Report on Opioids in West	
24	Virginia	

Page 6

1	Exhibit 21	List of different distributors that supplied to pharmacies other than McKesson, Cardinal, and ABDC	182
2	Exhibit 24	WV AG, DEA's Failure to Combat Diversion Cost Lives	188
3	Exhibit 25	Opinion in U.S. v. \$463,497.72	204
4	Exhibit 27	Office of Diversion Control letter from Haislip, December 8, 1993	226
5	Exhibit 29	Dr. Craig McCann Expert Report, Appendix 10	244
6	Exhibit 31	Rafalski Depo Transcript, May 17, 2011	223
7	Exhibit 33	Pharmaceutical Prime Vendor Contract	265
8	Exhibit 34	2008 Settlement between McKesson and DEA	256
9	Exhibit 36	Appendix B, Administrative Memorandum of Agreement between the DEA and McKesson	259
10	Exhibit 100	CAH Sixth Supplemental Objections and Responses to Plaintiffs' First Combined Discovery	357
11	Exhibit 101	Email from Michael Mone' to Gilberto Quintero dated October 11, 2010	370
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

## P R O C E E D I N G S

(9-11-2020, 9:00 A.M., this is the  
video deposition of James Rafalski via Zoom.)

4 THE VIDEOGRAPHER: Good morning. We  
5 are going on the record at 9:16 A.M. on September  
6 11th, 2020. This is media unit number 1 of the  
7 video recorded deposition of James Rafalski taken by  
8 counsel for the defendant in the matter of City of  
9 Huntington versus AmerisourceBergen Drug  
10 Corporation, et al., filed in the U.S. District  
11 Court for the Southern District of West Virginia,  
12 case number 3:17-01362. This deposition is being  
13 held remotely by videoconference.

14 My name is Greg Diefenbaugh from the  
15 firm Veritext Legal Solutions and I am the certified  
16 legal video specialist. The court reporter is  
17 Jennifer Kirkbride from the firm Veritext Legal  
18 Solutions.

19 I am not related to any party in this  
20 action, nor am I financially interested in the  
21 outcome. Counsel and all present and everyone  
22 attending remotely will now state their appearances  
23 and affiliations for the record. If there are any  
24 objections to the proceeding, please state them at

1 the time of your appearance beginning with the  
2 noticing attorney.

3 MR. FULLER: Mike Fuller on behalf of  
4 the plaintiff.

5 MR. SCHMIDT: Paul Schmidt on behalf  
6 of McKesson, along with my colleagues Chris Eppich  
7 and Megan Monaghan.

8 MR. MAHADY: Joseph Mahady on behalf  
9 of AmerisourceBergen Drug Corporation, along with my  
10 colleague, Abigail Pierce.

11 (The court reporter requested  
12 clarification)

13 MS. KNIGHT: Kathleen Knight, A.J.  
14 Elkins and Amy Quezon for the plaintiffs.

15 MS. SALGADO: Suzanne Salgado on  
16 behalf of Cardinal Health along with my colleague,  
17 Jennifer Wicht.

18 MR. FRANKS: I am Ray Franks, also on  
19 behalf of Cardinal Health, local counsel in  
20 Charleston, West Virginia.

21 MR. SCHMIDT: I'm sorry, who was that?

22 MR. FRANKS: It's Ray Franks. I am in  
23 Charleston, West Virginia, with Carey Douglas  
24 Kessler & Ruby, local counsel in this matter for

1 Cardinal Health.

2 MR. SCHMIDT: Sorry. Thank you.

3 THE VIDEOGRAPHER: Would our court  
4 reporter please swear in the witness.

5 JAMES E. RAFALSKI,  
6 being first duly sworn, was examined and deposed as  
7 follows:

8 THE VIDEOGRAPHER: Counsel may  
9 proceed.

10 EXAMINATION

11 BY MR. SCHMIDT:

12 Q. Thank you. And thank you, Mr. Rafalski.  
13 Let's go ahead and mark your report as Exhibit A,  
14 please, your West Virginia report. And do you have  
15 a copy of that with you? It would be in the box at  
16 tab 1.

17 And then let's also go ahead -- I'm  
18 sorry, let's mark that as Exhibit 1. And then let's  
19 mark as Exhibit 2 the supplemental reliance letter  
20 that we received, which should be tab 2 in your box.

21 (Deposition Exhibits 1 and 2 were  
22 marked.)

23 A. It's in here. No, it's not. Okay.

24 Q. And let me ask you, am I correct that

1 the due diligence assumption?

2 A. No, sir.

3 Q. Okay. And the difference between A and B  
4 is that A includes the due diligence assumption and  
5 B does not; correct?

6 A. That's correct.

7 Q. And so in that regard, B is closer to  
8 Masters and the real world than A; correct?

9 A. I don't know that it's closer. It's  
10 different and why I say that is because B removes  
11 any consideration whether due diligence is even  
12 done. And that would be way outside the scope of  
13 Masters, too, so when you're drawing those  
14 comparisons, as far as the triggering, I'll go back,  
15 they're exactly the same.

16 MR. SCHMIDT: Move to strike as  
17 totally nonresponsive.

18 Q. Sir, A and B are the same except A has a  
19 due diligence assumption and B does not; correct?

20 A. That's correct.

21 Q. The due diligence assumption in A was not  
22 used in the Masters program in the real world;  
23 correct?

24 A. That's correct.

Page 409

1 DEPOSITION REVIEW  
2 CERTIFICATION OF WITNESS

3 ASSIGNMENT REFERENCE NO: 4241593  
4 City Of Huntington v. Amerisourcebergen Drug Corp, Et Al.

5 DATE OF DEPOSITION: 9/11/2020

6 WITNESS' NAME: James Rafalski

7 In accordance with the Rules of Civil  
8 Procedure, I have read the entire transcript of  
9 my testimony or it has been read to me.

10 I have listed my changes on the attached  
11 Errata Sheet, listing page and line numbers as  
12 well as the reason(s) for the change(s).

13 I request that these changes be entered  
14 as part of the record of my testimony.

15 I have executed the Errata Sheet, as well  
16 as this Certificate, and request and authorize  
17 that both be appended to the transcript of my  
18 testimony and be incorporated therein.

19 October 16, 2020

20 Date

21 James Rafalski

22 Sworn to and subscribed before me, a  
23 Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

24 They have read the transcript;

25 They have listed all of their corrections  
in the appended Errata Sheet;

26 They signed the foregoing Sworn  
Statement; and

27 Their execution of this Statement is of  
their free act and deed.

28 I have affixed my name and official seal

29 this 16th day of October, 2020.

30 Notary Public

31 10/3/21

32 Commission Expiration Date

33 KENNETH A TROY  
34 NOTARY PUBLIC - STATE OF MICHIGAN  
35 COUNTY OF LIVINGSTON  
36 My Commission Expires October 3, 2021

37 25

Page 410

1 ERRATA SHEET

2 VERITEXT LEGAL SOLUTIONS MIDWEST

3 ASSIGNMENT NO: 4241593

4 PAGE/LINE(S) / CHANGE /REASON  
5 41:19/"No." to "No, I was not asked to provide opinions  
about the pharmacies' conduct."/correction  
6 49:10/"northern" and "northeastern" to "western"/correction  
7 62:18-19 / statement should be attributed to Mr. Rafalski,  
not Mr. Fuller / correction  
8 88:11/"them not a suspicious" to "them a suspicious"/correction  
9 101:13/"No." to "No, I can't tell what realistically should  
have been reported because the due diligence conducted by  
10 the defendants was insufficient. Because of this failure on  
11 their part, defendants would have no option but to report  
12 every flagged order."/correction and clarification  
13 104:8/"know" to "no"/correction  
14 105:11/"One initial order." to "One initial order per  
15 pharmacy."/correction  
16 391:15/"main effect" to "maintenance"/correction  
17 399:5/"lagging" to "flagging"/correction

18 October 16, 2020

19 Date James Rafalski

20 SUBSCRIBED AND SWORN TO BEFORE ME THIS 16<sup>th</sup>

21 DAY OF October, 2020.

22 Notary Public

23 10/3/21

24 Commission Expiration Date

KENNETH A TROY  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF LIVINGSTON  
My Commission Expires October 3, 2021

25